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VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

August 29, 2019

Doug Smith, Assistant VP, R&D/QA
Gary Smith, VP Research Development
Baker Commodities
4020 Bandini Blvd.
Vernon, CA 90058

VIA FIRST CLASS MAIL

CT Corporation System, Agent for Service of
Process for Baker Commodities (C1264834)
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

**Re: Notice of Violations and Intent to File Suit under the Federal Water
Pollution Control Act**

Dear Mr. Smith and Mr. Smith:

I am writing on behalf of Communities for a Better Environment ("CBE") in regard to violations of the Clean Water Act (the "Act" or "CWA") that CBE believes are occurring at Baker Commodities' industrial facility located at 4020 Bandini Blvd. in Vernon, California ("Facility"). This letter is being sent to Baker Commodities as the responsible owners or operators of the Facility (all recipients are hereinafter collectively referred to as "Baker Commodities").

This letter addresses Baker Commodities' unlawful discharge of pollutants from the Facility to channels that flow into the Los Angeles River. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board") Order No. 2015-0057-DWQ ("General Permit"). The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file

Notice of Violations and Intent to File Suit

suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency (“EPA”) and the state in which the violations occur.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, CBE hereby places Baker Commodities on formal notice that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CBE intends to file suit in federal court against Baker Commodities under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

I. Background.

A. Communities for a Better Environment

CBE is a non-profit 501(c)(3) environmental justice organization, organized under the laws of California with its local office at 6325 Pacific Blvd., Ste. 300, Huntington Park, California 90255. Founded in California in 1978, CBE has approximately six thousand active members throughout the state, including many who live and/or recreate in and around Los Angeles County. CBE is dedicated to empowering low-income communities of color that seek a voice in determining the health of their air, water and land. At the behest of its members, for at least 30 years, CBE has sought to protect and promote water resources that are swimmable, drinkable, fishable, and sustainable. To further this mission, CBE actively seeks federal and state implementation of the Clean Water Act. Where necessary, CBE directly initiates enforcement actions on behalf of itself and its members.

Members of CBE reside in close proximity to Vernon in Southeast Los Angeles cities including Huntington Park and Maywood, and more broadly in Los Angeles County, and near the Los Angeles River and Pacific Ocean (hereinafter “Receiving Waters”). As explained in detail below, the Facility continuously discharges pollutants into the Receiving Waters, in violation of the Clean Water Act and the General Permit. CBE members use the Receiving Waters to bird watch, view wildlife, hike, bike, walk, run, and sightsee, as well as for aesthetic enjoyment. Additionally, CBE members use local waters to engage in educational and scientific study through pollution and habitat monitoring and restoration activities. The unlawful discharge of pollutants from the Facility into the Receiving Waters impairs CBE’s members’ use and enjoyment of these waters. Thus, the interests of CBE’s members have been, are being, and will continue to be adversely affected by the Facility’s failure to comply with the Clean Water Act and the General Permit.

B. Baker Commodities’ Facility

On information and belief, CBE alleges that the industrial processes that occur at the Facility include animal rendering, equipment welding and maintenance, used cooking oil

recycling, trap grease recycling, tallow production, meat meal production, raw and finished material storage, vehicle cleaning, fueling and maintenance, and wastewater treatment.

The Facility's Storm Water Pollution Prevention Plan ("SWPPP") indicates that the Facility operates Monday to Saturday, 24 hours per day.

C. Discharges from the Facility

The Waste Discharger Identification Number ("WDID") for the Facility listed on documents submitted to the California Regional Water Quality Control Board, Los Angeles Region ("Regional Board") is 4 19I027055. On its Notice of Intent to comply with the General Permit ("NOI"), Baker Commodities certifies that the Facility is classified under SIC Code 2077. The Facility's NOI indicates that the Facility occupies 13.94 acres with 8.5 acres being industrial areas exposed to storm water. The Facility's SWPPP indicates that the Facility is approximately 11.8 acres. It collects and discharges storm water through at least two discharge locations (outfalls). On information and belief, CBE alleges the outfalls contain storm water that is commingled with runoff from the Facility from areas where industrial processes occur. Storm water discharged from the Facility flows into channels that empty into Reach 2 of the Los Angeles River, which flows into Reach 1 of the Los Angeles River and ultimately flows to the Pacific Ocean via the Los Angeles River Estuary and San Pedro Bay.

D. Waters Receiving the Facility's Discharges

With every significant rainfall event millions of gallons of polluted storm water originating from industrial operations such as the Facility pour into storm drains and local waterways. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. Such discharges of pollutants from industrial facilities contribute to the impairment of downstream waters and aquatic dependent wildlife. These contaminated discharges can and must be controlled for the ecosystem to regain its health.

The Regional Board has identified beneficial uses of the Los Angeles River, the Los Angeles River Estuary, and the San Pedro Bay and established water quality standards for these waters in the "Water Quality Control Plan – Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties", generally referred to as the Basin Plan. See http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/. The beneficial uses of these waters include, among others, municipal and domestic supply, groundwater recharge, water contact recreation, non-contact water recreation, warm freshwater habitat, wildlife habitat, wetland habitat, marine habitat, rare, threatened, or endangered species, preservation of biological habitats, migration of aquatic organisms, spawning, reproduction, and/or early development, and shellfish harvesting. The non-contact water recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating,

tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities.” *Id.* at 2-2. Contact recreation use includes fishing and wading. *Id.* Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people’s use of the Los Angeles River for contact and non-contact water recreation.

The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in, human, plant, animal, or aquatic life.” *Id.* at 3-38. The Basin Plan includes a narrative oil and grease standard which states that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses.” *Id.* at 3-29. The Basin Plan provides a narrative BOD standard that “[w]aters shall be free of substances that result in increases in the BOD [biochemical oxygen demand] which adversely affect beneficial uses.” *Id.* at 3-29. The Basin Plan provides that “[w]aters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-37. The Basin Plan provides that “[t]he pH of bays or estuaries shall not be depressed below 6.5 or raised above 8.5 as a result of waste discharges.” *Id.* at 3-35. The Basin Plan provides that “[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use.” *Id.* at 3-24. The Basin Plan provides that “[w]aters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-26. The Basin Plan provides that “[w]aters shall be free of coloration that causes nuisance or adversely affects beneficial uses.” *Id.* at 3-25. The Basin Plan provides that “[w]aters shall not contain taste or odor-producing substances in concentrations that impart undesirable tastes or odors to fish flesh or other edible aquatic resources, cause nuisance, or adversely affect beneficial uses.” *Id.* at 3-37. The Basin Plan provides that “[w]aters shall not contain biostimulatory substances in concentrations that promote aquatic growth to the extent that such growth causes nuisance or adversely affects beneficial uses.” *Id.* at 3-24.

The Basin Plan provides a freshwater one-hour objective for ammonia. *See id.* at 3-6 – 3-25. This objective is based on pH and differs if the receiving waters are designated as “COLD” and “MIGR” in the Basin Plan. Here, the Receiving Waters are neither “COLD” nor “MIGR.” The Table 3-1 of the Basin Plan presents the one-hour objective for Ammonia-N for freshwater, based on the pH of the receiving water.

The EPA has adopted freshwater numeric water quality standards for lead of 0.065 mg/L (Criteria Maximum Concentration – “CMC”); and for copper of 0.013 mg/L (CMC). 65 Fed. Reg. 31712 (May 18, 2000) (California Toxics Rule).¹

¹ These values are expressed as a function of total hardness (mg/L) in the water body and correspond to a total hardness of 100 mg/L, which is the default listing in the California Toxics Rule.

The EPA 303(d) List of Water Quality Limited Segments lists Reach 2 of the Los Angeles River as impaired for ammonia, copper, lead, oil, and nutrients (algae), among other pollutants. *See* https://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2014_2016.shtml. Reach 1 of the Los Angeles River is impaired for ammonia, lead, nutrients, and pH, among other pollutants. The Los Angeles River Estuary is impaired for trash and toxicity, among other pollutants.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”).² The following benchmarks have been established for the following pollutants discharged by Baker Commodities: pH – 6.0 - 9.0 standard units (“s.u.”); total suspended solids (“TSS”) – 100 mg/L; oil and grease (“O&G”) – 15 mg/L; chemical oxygen demand (“COD”) – 120 mg/L; biochemical oxygen demand (“BOD”) – 30 mg/L; lead – 0.262 mg/L; phosphorus – 2.0 mg/L; copper – 0.0332 mg/L; ammonia – 2.14 mg/L; and nitrate + nitrite as nitrogen (“N+N”) – 0.68 mg/L.

These benchmarks are reflected in the General Permit in the form of Numeric Action Levels (“NALs”). The General Permit incorporates annual NALs, which reflect the 2008 EPA Multi-Sector General Permit benchmark values, and instantaneous maximum NALs, which are derived from a Water Board dataset. The following annual NALs have been established under the General Permit: TSS – 100 mg/L; O&G – 15 mg/L; COD – 120 mg/L; BOD – 30 mg/L; lead – 0.262 mg/L; phosphorus – 2.0 mg/L; copper – 0.0332 mg/L; ammonia – 2.14 mg/L; and N+N – 0.68 mg/L. The General Permit also establishes the following instantaneous maximum NALs: pH – 6.0-9.0 s.u.; TSS – 400 mg/L; and oil & grease (“O&G”) – 25 mg/L.

II. Alleged Violations of the General Permit.

A. Discharges in Violation of the Permit.

On information and belief, CBE alleges that Baker Commodities has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT.

Effluent Limitation V.A of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section X.H. Conventional pollutants

² The Benchmark Values can be found at http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf.

are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition III.B of the General Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition III.C of the General Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation VI.B of the General Permit prohibits storm water discharges and authorized non-storm water discharges that adversely impact human health or the environment. Receiving Water Limitation VI.A and Discharge Prohibition III.D of the General Permit prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation VI.A. As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

On information and belief, CBE alleges that the Facility has discharged and continues to discharge storm water with unacceptable levels of pH, TSS, O&G, lead, phosphorus, copper, ammonia, N+N, BOD, and COD in violation of the General Permit. Baker Commodities' sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following alleged discharges of pollutants from the Facility have contained measurements of pollutants in excess of applicable numerical and narrative water quality standards established in the Basin Plan and the California Toxics Rule. They have thus violated Discharge Prohibitions III.C and III.D and Receiving Water Limitations VI.A, VI.B, and VI.C of the General Permit; and are evidence of ongoing violations of Effluent Limitation V.A of the General Permit.

Sampling Date	Parameter	Observed Concentration	Basin Plan Water Quality Objective / CTR	Outfall (as identified by the Facility)
3/2/2018	pH	6.3	6.5 – 8.5	East Gate
3/21/2017	pH	5.94	6.5 – 8.5	Central Gate
3/21/2017	pH	6.35	6.5 – 8.5	West Gate
3/21/2017	pH	5.87	6.5 – 8.5	East Gate
3/21/2017	Lead	0.319 mg/L	0.065 mg/L	Central Gate
3/21/2017	Lead	0.075 mg/L	0.065 mg/L	West Gate
3/21/2017	Copper	0.16 mg/L	0.013 mg/L	Central Gate
3/21/2017	Copper	0.247 mg/L	0.013 mg/L	West Gate
3/21/2017	Copper	0.056 mg/L	0.013 mg/L	East Gate

The information in the above table reflects data gathered from the Facility's self-monitoring during the 2017-2018 and 2016-2017 reporting years.³

In addition, the Facility has reported the following concentrations of O&G in its discharges during the 2016-2017 and 2017-2018 reporting years: 17 mg/L, 63.4 mg/L, 23.5 mg/L, 23.7 mg/L, 67.9 mg/L, and 34.7 mg/L. On information and belief, CBE alleges that it would be impossible to discharge storm water with those concentrations of O&G without said water containing a visible sheen and violating the narrative O&G standard in the Basin Plan.

The Facility reported the following concentrations of BOD in its discharges during the 2017-2018 reporting year: 110 mg/L, 234 mg/L, and 38.85 mg/L. On information and belief, CBE alleges that discharges of storm water with said concentrations of BOD would violate the narrative BOD standard in the Basin Plan.

The Facility reported the following concentrations of ammonia in its discharges during the 2016-2017 and 2017-2018 reporting years: 0.952 mg/L, 1.74 mg/L, 2.76 mg/L, 4.2 mg/L, 9.8 mg/L, and 6.9 mg/L. On information and belief, CBE alleges that discharges of storm water with said concentrations of ammonia would violate the freshwater one-hour objective for ammonia contained in the Basin Plan.

CBE alleges that since at least February 23, 2017⁴, and continuing through today, the Facility has discharged storm water contaminated with pollutants at levels that exceed one or more applicable water quality standards, including but not limited to each of the following:

- pH – 6.5 – 8.5 (Basin Plan at 3-35)
- Lead – 0.065 mg/L (CMC)
- Copper – 0.013 mg/L (CMC)
- Ammonia – Freshwater one-hour objective
- Oil and Grease – Waters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water

³ The Facility has failed to submit any records of storm water sampling for the 2018-2019 reporting year, claiming that there were no discharges. Further, the Facility failed to analyze its storm water discharges during the 2017-2018 reporting year for lead and copper. On information and belief, CBE alleges that to the extent that the Facility did collect and analyze storm water samples during the 2018-2019 reporting year, or analyze discharges for copper and lead during the 2017-2018 reporting year, that many of these discharges would violate applicable water quality standards as alleged in this table.

⁴ This is the date when the State Board indicated that it received and processed Baker Commodities' NOI for the Facility. CBE is aware that the Facility has been in operation for many years. To the extent that the Facility was operating under the General Permit (or prior iterations thereof) prior to February 23, 2017, CBE would allege violations dating back consistent with the five-year statute of limitations for the Clean Water Act.

or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses. (Basin Plan at 3-29)

- Biochemical Oxygen Demand – Waters shall be free of substances that result in increases in the BOD which adversely affect beneficial uses. (Basin Plan at 3-29)

The following discharges of pollutants from the Facility have violated Discharge Prohibitions III.B and III.C and Receiving Water Limitations VI.A and VI.B of the General Permit; and are evidence of ongoing violations of Effluent Limitation V.A of the General Permit.

Sampling Date	Parameter	Observed Concentration	EPA Benchmark Value /Annual NAL	Outfall (as identified by the Facility)
3/21/2017	pH	5.94	6.0 – 9.0 ⁵	Central Gate
3/21/2017	pH	5.87	6.0 – 9.0	East Gate
1/9/2018	Total Suspended Solids	140 mg/L	100 mg/L	East Gate
2017-2018 Reporting Year	Total Suspended Solids	102 mg/L	100 mg/L	All discharge points ⁶
3/21/2017	Total Suspended Solids	1356 mg/L	100 mg/L	Central Gate
3/21/2017	Total Suspended Solids	455 mg/L	100 mg/L	West Gate
2016-2017 Reporting Year	Total Suspended Solids	617 mg/L	100 mg/L	All discharge points ⁷
3/21/2018	Oil & Grease	34.7 mg/L ⁸	15 mg/L	East Gate
3/2/2018	Oil & Grease	67.9 mg/L ⁹	15 mg/L	East Gate
1/9/2018	Oil & Grease	23.7 mg/L	15 mg/L	East Gate
2017-2018 Reporting Year	Oil & Grease	42.1 mg/L	15 mg/L	All discharge points ¹⁰
3/21/2017	Oil & Grease	23.5 mg/L	15 mg/L	Central Gate
3/21/2017	Oil & Grease	63.4 mg/L ¹¹	15 mg/L	West Gate

⁵ The values for pH in this table represent the instantaneous maximum NAL for pH.

⁶ This value is represents the average of all TSS measurements taken at the Facility during the 2017-2018 reporting year and is higher than 100 mg/L, the annual NAL for TSS.

⁷ This value is represents the average of all TSS measurements taken at the Facility during the 2016-2017 reporting year and is higher than 100 mg/L, the annual NAL for TSS.

⁸ This value is in excess of 25 mg/L, the instantaneous maximum NAL for O&G.

⁹ This value is in excess of 25 mg/L, the instantaneous maximum NAL for O&G.

¹⁰ This value is represents the average of all O&G measurements taken at the Facility during the 2017-2018 reporting year and is higher than 15 mg/L, the annual NAL for O&G.

¹¹ This value is in excess of 25 mg/L, the instantaneous maximum NAL for O&G.

3/21/2017	Oil & Grease	17 mg/L	15 mg/L	East Gate
2016-2017 Reporting Year	Oil & Grease	34.6 mg/L	15 mg/L	All discharge points ¹²
3/21/2017	Lead	0.319 mg/L	0.262 mg/L	Central Gate
3/21/2017	Phosphorus	5.91 mg/L	2.0 mg/L	West Gate
2016-2017 Reporting Year	Phosphorus	2.3 mg/L	2.0 mg/L	All discharge points ¹³
3/21/2017	Copper	0.16 mg/L	0.0332 mg/L	Central Gate
3/21/2017	Copper	0.247 mg/L	0.0332 mg/L	West Gate
3/21/2017	Copper	0.056 mg/L	0.0332 mg/L	East Gate
2016-2017 Reporting Year	Copper	0.154 mg/L	0.0332 mg/L	All discharge points ¹⁴
1/9/2018	Ammonia	2.76 mg/L	2.14 mg/L	East Gate
3/21/2017	Ammonia	4.2 mg/L	2.14 mg/L	Central Gate
3/21/2017	Ammonia	9.8 mg/L	2.14 mg/L	West Gate
3/21/2017	Ammonia	6.9 mg/L	2.14 mg/L	East Gate
2016-2017 Reporting Year	Ammonia	6.97 mg/L	2.14 mg/L	All discharge points ¹⁵
3/21/2018	Nitrate + Nitrite as N	2.74 mg/L	0.68 mg/L	East Gate
3/2/2018	Nitrate + Nitrite as N	1.38 mg/L	0.68 mg/L	East Gate
1/9/2018	Nitrate + Nitrite as N	2.38 mg/L	0.68 mg/L	East Gate
2017-2018 Reporting Year	Nitrate + Nitrite as N	1.82 mg/L	0.68 mg/L	All discharge points ¹⁶
3/21/2017	Nitrate + Nitrite as N	10.28 mg/L	0.68 mg/L	Central Gate
3/21/2017	Nitrate + Nitrite as N	15.05 mg/L	0.68 mg/L	East Gate

¹² This value is represents the average of all O&G measurements taken at the Facility during the 2016-2017 reporting year and is higher than 15 mg/L, the annual NAL for O&G.

¹³ This value is represents the average of all phosphorus measurements taken at the Facility during the 2016-2017 reporting year and is higher than 2.0 mg/L, the annual NAL for phosphorus.

¹⁴ This value is represents the average of all copper measurements taken at the Facility during the 2016-2017 reporting year and is higher than 0.0332 mg/L, the annual NAL for copper.

¹⁵ This value is represents the average of all ammonia measurements taken at the Facility during the 2016-2017 reporting year and is higher than 2.14 mg/L, the annual NAL for ammonia.

¹⁶ This value is represents the average of all N+N measurements taken at the Facility during the 2017-2018 reporting year and is higher than 0.68 mg/L, the annual NAL for N+N.

2016-2017 Reporting Year	Nitrate + Nitrite as N	12.67 mg/L	0.68 mg/L	All discharge points ¹⁷
3/6/2016	Nitrate + Nitrite as N	0.95 mg/L	0.68 mg/L	Location 7
3/6/2016	Nitrate + Nitrite as N	1 mg/L	0.68 mg/L	Location 8
3/21/2018	Biochemical Oxygen Demand	110 mg/L	30 mg/L	East Gate
3/2/2018	Biochemical Oxygen Demand	234 mg/L	30 mg/L	East Gate
1/9/2018	Biochemical Oxygen Demand	38.85 mg/L	30 mg/L	East Gate
2017-2018 Reporting Year	Biochemical Oxygen Demand	127.6 mg/L	30 mg/L	All discharge points ¹⁸
3/21/2018	Chemical Oxygen Demand	0.56 mg/L	120 mg/L	East Gate
3/2/2018	Chemical Oxygen Demand	0.35 mg/L	120 mg/L	East Gate
1/9/2018	Chemical Oxygen Demand	2.6 mg/L	120 mg/L	East Gate
2017-2018 Reporting Year	Chemical Oxygen Demand	2.6 mg/L	120 mg/L	All discharge points ¹⁹
3/21/2017	Chemical Oxygen Demand	2.5 mg/L	120 mg/L	Central Gate
3/21/2017	Chemical Oxygen Demand	0.78 mg/L	120 mg/L	West Gate
3/21/2017	Chemical Oxygen Demand	1.24 mg/L	120 mg/L	East Gate
2016-2017 Reporting Year	Chemical Oxygen Demand	1.6 mg/L	120 mg/L	All discharge points ²⁰

¹⁷ This value is represents the average of all N+N measurements taken at the Facility during the 2016-2017 reporting year and is higher than 0.68 mg/L, the annual NAL for N+N.

¹⁸ This value is represents the average of all BOD measurements taken at the Facility during the 2017-2018 reporting year and is higher than 30 mg/L, the annual NAL for BOD.

¹⁹ This value is represents the average of all COD measurements taken at the Facility during the 2017-2018 reporting year and is higher than 120 mg/L, the annual NAL for COD.

²⁰ This value is represents the average of all COD measurements taken at the Facility during the 2016-2017 reporting year and is higher than 120 mg/L, the annual NAL for COD.

The information in the above table reflects data gathered from the Facility's self-monitoring during the 2016-2017 and 2017-2018 reporting years.²¹ CBE alleges on information and belief that since at least February 23, 2017, the Facility has discharged storm water contaminated with pollutants at levels that exceed the applicable EPA Benchmarks and NALs for pH, TSS, O&G, lead, phosphorus, copper, ammonia, N+N, BOD, and COD.

CBE's investigation, including its review of the Facility's SWPPP, the analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable water quality standards, and EPA benchmark values and NALs, indicates that Baker Commodities has not implemented BAT and BCT at the Facility for its discharges of pH, TSS, O&G, lead, phosphorus, copper, ammonia, N+N, BOD, COD, and potentially other pollutants in violation of Effluent Limitation V.A of the General Permit. The Facility was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, Baker Commodities is discharging polluted storm water associated with its industrial operations from the Facility without having implemented BAT and BCT.

In addition, the numbers listed above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions III.C and III.D and Receiving Water Limitations VI.A, VI.B, and VI.C of the General Permit. CBE alleges on information and belief that such violations also have occurred and will occur on other rain dates, including on information and belief every significant rain event that has occurred since at least February 23, 2017, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CBE alleges that the Facility has discharged storm water containing impermissible and unauthorized levels of pH, TSS, O&G, lead, phosphorus, copper, ammonia, N+N, BOD, and COD in violation of Section 301(a) of the Act as well as Effluent Limitation V.A, Discharge Prohibitions III.B and III.C and Receiving Water Limitations VI.A and VI.B of the General Permit.²²

Further, CBE puts Baker Commodities on notice that General Permit Effluent Limitation V.A is a separate, independent requirement with which Baker Commodities must comply, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the General Permit does not amount to compliance with the Permit's Effluent Limitations, including Baker Commodities' obligation to have installed BAT and BCT at the Facility. While exceedances of the NALs demonstrate that a facility is among the worst performing facilities in the State, the NALs do not represent technology based criteria relevant to determining whether

²¹ As noted above, the Facility has failed to submit any records of storm water sampling for the 2018-2019 reporting year. On information and belief, CBE alleges that to the extent that the Facility did collect and analyze storm water samples during the 2018-2019 reporting year that many of these samples would exceed applicable NALs as alleged in this table.

²² The rain dates on the attached table are all the days when 0.1" or more rain was observed at a weather station in Los Angeles located approximately 5.5 miles from the Facility. Rain data was accessed from the National Oceanic and Atmospheric Administration at <https://www.ncdc.noaa.gov/cdo-web/>. (Last accessed on August 28, 2019).

an industrial facility has implemented best management practices (“BMPs”) that achieve BAT/BCT.²³ Finally, despite the fact that Baker Commodities has submitted Exceedance Response Action Plans pursuant to Section XII of the General Permit, the violations of Effluent Limitation V.A described in this Notice Letter are ongoing.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Each discharge of storm water constitutes an unauthorized discharge of pH, TSS, O&G, lead, phosphorus, copper, ammonia, N+N, BOD, and COD, and polluted storm water associated with industrial activity in violation of Section 301(a) of the CWA. Each day that the Facility operates without implementing BAT/BCT is a violation of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Baker Commodities is subject to penalties for violations of the General Permit and the Act since at least February 23, 2017.

B. Failure to Develop, Implement, and/or Revise an Adequate Monitoring Plan and Comply with Monitoring Requirements.

The General Permit requires facility operators to develop and implement an adequate monitoring and reporting Program before industrial activities begin at a facility. General Permit, § XI. The General Permit also requires that dischargers prepare and include in the SWPPP a Monitoring Implementation Plan (“MIP”). *Id.*, § X.I. An adequate MIP and Monitoring Program helps to ensure that BMPs are effectively reducing and/or eliminating pollutants from a facility’s storm water discharges.

As part of the required monitoring program, all facility operators must conduct visual observations of storm water discharges and authorized non-storm water discharges, and collect and analyze samples of storm water discharges. As part of the required reporting program, all facility operators must timely submit an Annual Report for each reporting year.

The General Permit mandates that facility operators sample four storm water discharges from all discharge locations over the course of the reporting year. General Permit, § XI.B.2. Storm water discharges trigger the sampling requirement under the General Permit when they produce a discharge from a particular drainage area and are preceded by 48 hours without a discharge from that drainage area. *Id.*, § B.1 (Qualifying Storm Events). A sample must be collected from each drainage area at all discharge locations at the facility within four hours of the start of the discharge. *Id.*, §§ B.4, B.5. Baker Commodities has repeatedly violated these monitoring requirements.

²³ “The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in this General Permit are not, in and of themselves, violations of this General Permit.” General Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. *See* General Permit, Section XII

i. Failure to Conduct Required Sampling and Analysis at all Discharge Locations.

The Facility's SWPPP indicates that there is only one discharge location onsite – at the eastern gate. It further indicates that on October 1, 2017, the central and western gate discharge locations were removed since “berms located at each location adequately prevent discharge.” SWPPP, p. 2. On March 21, 2018, Baker Commodities collected a storm water sample at the East Gate. However, based on observations from that same day, on information and belief CBE alleges that the Facility was also discharging storm water to Bandini Blvd. from a different gate on Bandini Blvd. located west of the intersection of S. Indiana Street and Bandini Blvd. On information and belief, CBE alleges that the Facility failed to collect and analyze storm water discharges from this second location during all storm water sampling events during the 2017-2018 reporting year.

These failures result in at least 3 violations of the General Permit. These violations of the General Permit are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Baker Commodities is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since February 23, 2017.

ii. Failure to Conduct Required Sampling and Analysis From All Qualifying Storm Events.

On information and belief, CBE also alleges that Baker Commodities failed to collect and analyze any storm water samples during the 2018-2019 reporting year. The 2018-2019 reporting year has included many likely qualifying storm events that should have been sampled by the Facility. Specifically, on information and belief, CBE alleges that storm water discharges from qualifying storm events at the Facility have occurred on the following dates:

- October 12, 2018
- November 22, 2018
- November 29, 2018
- November 30, 2018
- December 5, 2018
- December 6, 2018
- January 5, 2019
- January 12, 2019
- January 15, 2019
- January 16, 2019
- January 17, 2019
- January 31, 2019
- February 2, 2019
- February 4, 2019
- February 5, 2019
- February 9, 2019
- February 14, 2019
- February 15, 2019
- March 2, 2019
- March 6, 2019
- May 16, 2019

With respect to the missing samples for the 2018-2019 report year, CBE notes that Section XI.B.11.a of the General Permit requires that a discharger submit all sampling and analytical results via the State Board's Stormwater Multiple Application and Report Tracking

System (“SMARTS”) within 30 days of obtaining all results for each sampling event. On information and belief, CBE alleges that as of the date of this letter, Baker Commodities should have submitted to SMARTS any results that would have been taken during the 2018-2019 reporting year. Baker Commodities has failed to do so.

The failure to collect and analyze storm water samples from the requisite sampling events at all storm water discharge locations at the Facility results in at least 8 violations of the General Permit for the 2018-2019 reporting year. The failure to upload sampling results to SMARTS from the 2018-2019 reporting year results in at least 8 violations of the General Permit. These violations of the General Permit are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Baker Commodities is subject to penalties for violations of the General Permit and the Act’s monitoring and sampling requirements since at least February 23, 2017.

iii. Failure to Analyze for Required Pollutant Parameters.

Under the General Permit, facilities must analyze storm water samples for “[a]dditional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment.” General Permit, Section XI(B)(6)(c). The Facility’s SWPPP’s pollutant source assessment lists coliform bacteria and metals as pollutants associated with industrial activities and materials at the Facility.

Under the General Permit, facilities must also analyze storm water samples for applicable parameters listed in Table 1 of the General Permit. General Permit, Section XI(B)(6)(d). For facilities with an SIC Code of 2077, like Baker Commodities’ Facility, Table 1 requires analysis of BOD, COD, and N+N.

Under the General Permit, facilities must analyze collected samples for “[a]dditional applicable industrial parameters related to receiving waters with 303(d) listed impairments or approved TMDLs based on the assessment in [SWPPP] Section X(G)(2)(a)(ix). General Permit, Section XI(B)(6)(e). Section X(G)(2)(a)(ix) of the General Permit requires that a facility identify “industrial pollutants related to the receiving waters with 303(d) listed impairments identified in Appendix 3 or approved TMDLs that may be causing or contributing to an exceedance of a water quality standard in the receiving waters.” The Facility’s SWPPP notes that Reach 2 of the Los Angeles River is impaired for lead and copper, among other pollutants.

Based on the Facility’s past measurements of lead, copper, phosphorus, and BOD; the SWPPP’s pollutant source assessment; the impairments for the Receiving Waters; and the Facility’s SIC Code, CBE alleges that Baker Commodities must analyze the Facility’s storm water discharges for lead, copper, phosphorus, BOD, and coliform bacteria. Baker Commodities failed to analyze its storm water discharges for BOD during the 2016-2017 reporting year. Baker Commodities failed to analyze its storm water discharges for lead, phosphorus, and copper during the 2017-2018 reporting year. These failures results in at least 16 violations of the General Permit.

In addition, CBE alleges that the SWPPP for the Facility contains an insufficient pollutant source assessment in that it fails to identify BOD as an industrial pollutant.

These violations are ongoing. Baker Commodities is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since at least February 23, 2017.

C. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan.

Under the General Permit, the State Board has designated the SWPPP as the cornerstone of compliance with NPDES requirements for storm water discharges from industrial facilities, which helps ensure that operators meet effluent and receiving water limitations. Key objectives of the SWPPP requirement are to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-stormwater discharges from the facility, and to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges. General Permit § X.C. These BMPs must achieve compliance with the General Permit's effluent limitations and receiving water limitations. To ensure compliance with the General Permit, the SWPPP must be evaluated and revised as necessary. General Permit § X.B. Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. General Permit, Fact Sheet § I.1.

The SWPPP must include: a pollution prevention team; a site map; a list of significant materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-stormwater discharges, including structural BMPs where non-structural BMPs are not effective. All dischargers are required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve as the basis for compliance with the General Permit's technology-based effluent limitations. General Permit, § X.H.

The General Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. General Permit, § X.H.1. Failure to implement all of these minimum BMPs is a violation of the General Permit. *Id.*, Fact Sheet § I.2.o. The General Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. *Id.*, § X.H.2. Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the General Permit. *Id.* The General Permit also requires that the SWPPP include BMP

Descriptions and a BMP Summary Table. *Id.*, § X.H.4, .5. A Facility's BMPs must, at all times, be robust enough to meet the General Permit's and 33 U.S.C. ¶ 1342(p)(3)(A)'s requirement that all discharges associated with industrial activities be subjected to BAT and BCT. General Permit §§ V.A, I.A.1, I.D.31, I.D.32.

Despite these clear BMP requirements, Baker Commodities has been conducting and continues to conduct industrial operations at the Facility with an inadequately developed, implemented, and/or revised SWPPP.

The SWPPP fails to comply with Section X.A.9 of the General Permit. The SWPPP fails to contain an Annual Evaluation.

The SWPPP fails to comply with Section X.A.10 of the General Permit. The SWPPP fails to indicate the date that the SWPPP was initially prepared.

The SWPPP fails to comply with Section X.F of the General Permit. The SWPPP fails to include a list of industrial materials handled at the Facility, and the locations where each material is stored, received, shipped, and handled, as well as the typical quantities and handling frequency.

The SWPPP fails to comply with Section X.G.1.a of the General Permit. The SWPPP fails to describe each industrial process including: manufacturing, cleaning, maintenance, recycling, disposal, and any other activities related to the process. The SWPPP fails to describe the type, characteristics, and approximate quantity of industrial materials used in or resulting from the process. The SWPPP fails to identify and describe all areas protected by containment structures and the corresponding containment capacity.

The SWPPP fails to comply with Section X.G.1.b of the General Permit. The SWPPP fails to describe each material handling and storage area at the Facility, including: the type, characteristics, and quantity of industrial materials handled or stored; the shipping, receiving, and loading procedures; the spill or leak prevention and response procedures; and the areas protected by containment structures and the corresponding containment capacity.

The SWPPP fails to comply with Section X.G.1.c of the General Permit. The SWPPP fails to describe all industrial activities that generate a significant amount of dust or particulate that may be deposited within the Facility boundaries. The SWPPP fails to describe such industrial activities, including the discharge locations, the source type, and the characteristics of the dust or particulate pollutant.

The SWPPP fails to comply with Section X.G.2 of the General Permit. The SWPPP fails to contain the required narrative assessment of all areas of industrial activity with potential industrial pollutant sources. The SWPPP fails to identify in the SWPPP any areas of the Facility where the minimum BMPs will not adequately reduce or prevent pollutants in the storm water discharge in compliance with Section V.A of the General Permit. CBE alleges that all areas of

the Facility are lacking in BMPs that will achieve that reduction or prevention. Baker Commodities fails to identify advanced BMPs for those areas.

The SWPPP for the Facility fails to comply with the requirements of Section X.H of the General Permit. The SWPPP fails to implement required advanced BMPs. The SWPPP fails to identify and justify each minimum BMP or applicable BMP not being implemented at the Facility because they do not reflect best industry practice considering BAT/BCT.

The SWPPP fails to comply with Section XI.C.4 of the General Permit. This section requires that the MIP be included in the SWPPP and contain certain items. If a facility plans to do a Representative Sampling Reduction in accordance with Section XI.C.4 of the General Permit, Section X.I.3.b of the General Permit requires that it be included as part of the MIP. Although the Facility's 2017-2018 Annual Report indicates that Baker Commodities has reduced the number of sampling locations in accordance with the Representative Sampling Reduction in Section XI.C.4, the MIP fails to contain the requisite Representative Sampling Reduction.

Most importantly, the Facility's storm water samples and discharge observations have consistently exceeded applicable water quality standards, EPA benchmarks and NALs, demonstrating the failure of their BMPs to reduce or prevent pollutants associated with industrial activities in the Facility's discharges. Despite these exceedances, Baker Commodities has failed to sufficiently update and revise the Facility's SWPPP. The Facility's SWPPP has therefore never achieved the General Permit's objective to identify and implement proper BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges.

CBE puts Baker Commodities on notice that it violates the General Permit and the CWA every day that the Facility operates with inadequately developed, implemented, and/or revised SWPPP. These violations are ongoing, and CBE will include additional violations as information and data become available. Baker Commodities is subject to civil penalties for all violations of the CWA occurring since at least February 23, 2017.

D. Failure to Comply with General Permit Evaluation and ERA Requirements.

In March 2019, Baker Commodities submitted a Level 1 ERA Report and Level 2 ERA Action Plan Documentation to SMARTS.

Section XII.D.1 of the General Permit sets out the requirements for a Level 1 ERA Report. It requires that the report include an a summary of its evaluation, in which the discharger is to identify corresponding BMPs in the SWPPP and any additional BMPs and SWPPP revision necessary to prevent future NAL exceedances and to comply with the General Permit. CBE alleges that Baker Commodities' Level 1 Report fails to include these components.

Although "[i]t is not a violation of this General Permit to exceed the NAL values; it is a violation of the permit, however, to fail to comply with the Level 1 status and Level 2 status ERA requirements in the event of NAL exceedances." General Permit, Fact Sheet, p. 60.

Accordingly, CBE puts Baker Commodities on notice that it has violated and continues to violate the General Permit and the CWA every day that the Facility operates without an adequate Level 1 ERA Report since at least March 2019. These violations are ongoing. Baker Commodities is subject to civil penalties for each day it has failed to submit an adequate Level 1 ERA Report.

III. Persons Responsible for the Violations.

CBE puts Baker Commodities, Doug Smith, and Gary Smith on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CBE puts Baker Commodities, Doug Smith, and Gary Smith on notice that it intends to include those subsequently identified persons in this action.

IV. Name and Address of Noticing Parties.

The name, address and telephone number of Communities for a Better Environment is as follows:

Milton Hernandez-Nimatuj
Communities for a Better Environment
6325 Pacific Blvd., Ste. 300
Huntington Park, California 90255
Tel. (323) 826-9771
nimatuj@cbeocal.org

V. Counsel.

CBE has retained legal counsel to represent it in this matter. Please direct all communications to:

Michael R. Lozeau
Lozeau Drury LLP
1939 Harrison Street, Suite 150
Oakland, California 94612
Tel. (510) 836-4200
michael@lozeaudrury.com

VI. Penalties.

As detailed in this Notice of Intent to Sue sent to Baker Commodities, in accordance with requirements of the CWA, Baker Commodities is in violation of multiple requirements of the General Permit, including exceedances of receiving water limitations and effluent limitations, monitoring and reporting violations, and SWPPP violations. Section 309 of the CWA, 33 U.S.C. § 1319(d), as adjusted by 40 C.F.R. §19.4, provides for penalties of up to \$37,500 per day per violation for all violations occurring since October 28, 2011, up to and including November 2,

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2015, and up to \$53,484 for violations occurring after November 2, 2015 (and assessed after January 15, 2018). In addition to civil penalties, CBE will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CBE believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CBE intends to file a citizen suit under Section 505(a) of the Act against Baker Commodities and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CBE would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CBE suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. CBE does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in cursive script, reading "Michael R. Lozeau".

Michael R. Lozeau
Lozeau Drury LLP
Attorneys for Communities for a Better Environment

SERVICE LIST – via certified mail

Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
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State Water Resources Control Board
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U.S. Department of Justice
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Deborah Smith, Executive Officer II
Los Angeles Regional Water Quality Control Board
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Los Angeles, CA 90013

ATTACHMENT A
Alleged Rain Dates, Baker Commodities, Vernon, CA

3/21/2017	11/22/2018	2/3/2019
5/7/2017	11/29/2018	2/4/2019
10/20/2017	12/5/2018	2/5/2019
1/8/2018	12/6/2018	2/9/2019
1/9/2018	1/5/2019	2/10/2019
3/2/2018	1/7/2019	2/14/2019
3/10/2018	1/12/2019	2/15/2019
3/15/2018	1/14/2019	3/2/2019
3/16/2018	1/15/2019	3/6/2019
3/21/2018	1/16/2019	5/16/2019
3/22/2018	1/17/2019	5/19/2019
10/12/2018	1/31/2019	
10/13/2018	2/2/2019	

Notice of Violations and Intent to File Suit